In *Law Tun Wah* v. *Public Prosecutor*,[3] the Federal Court held, no doubt *obiter* that even where the prosecution did not wish to produce a cautioned statement, which was like the present one, recorded under the Internal Security Act, 1960, defence could cause prosecution to produce if they consider that it would assist the accused.

I shall not touch upon other questions raised in the course of arguing the Motion for a certificate under section 66 of the Courts of Judicature Act, because these other questions were not argued at the appeal.

For the reasons given above, the appeal was dismissed.

Appeal dismissed.

Solicitors: *Chin & Sethu.*

SYARIKAT CHIP SENG TRADING SDN. BHD. & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Suffian L.P.) December 19, 1978]

[Kuala Lumpur — Federal Territory Criminal Trial Appeal Nos. 70 & 71 of 1977]

Trade Descriptions — False trade descriptions on school exercise books — Appeal against conviction — Trade Descriptions Act, 1972, ss. 3(1)(a), 4(1)a), 4(3) & 5(1) to (3) — Evidence Act, 1950, s. 33.

There are two appeals in this case. In appeal No. 70, a company, Syarikat Chip Seng Trading Sdn. Bhd. was convicted; and in Appeal No. 71, its manager. They were convicted of applying false trade descriptions to school exercise books, (the number of pages indicated on the cover of the book did not represent the actual and correct number of pages of the book) in the course of a trade or business. They appealed. The issue before the court is whether the learned magistrate was right in finding that the accused had in the course of a trade or business applied false trade descriptions to the exercise books.

Held: the learned magistrate was right in finding that the man in the street would conclude that the figures on the outside covers of these books were likely to be taken for an indication of their pages and that they were misleading.

CRIMINAL APPEALS.

Jagjit Singh for both appellants.

M. Yassin bin Ibrahim (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian L.P.: These two appeals were heard together by me sitting in the High Court.

In Appeal No. 70 a company, Syarikat Chip Seng Trading Sendirian Berhad ("the company"), was convicted; and in Appeal No. 71, its manager. They were convicted of applying false trade descriptions to school exercise books in the course of a trade or business.

The charge against the company reads as follows:

"That you on February 23, 1973 at about 11.30 a.m. at premises Lot No. 14, Light Industrial Area, 4¼ mile, Klang Gate Road, Kuala Lumpur in the District of Kuala Lumpur in the State of Selangor in the course of a business, did apply a false trade description to the following goods: to wit the number of pages indicated on the cover of the book does not represent the actual and correct number of pages of the book:—

(1) Exercise Books Horse Brand marked '40' on the cover when the actual pages being 24 - - - - - - - - - 10,200 books

(2) Exercise Books Horse Brand marked '80' on the cover when the actual pages being 60 - - - - - - - - - 6,800 books

(3) Exercise Books Silver Cup Brand marked '120' on the cover when the actual pages being 100 - - - - - - - - 3,000 books

and that you have thereby committed an offence under section 3(1)(a) of the Trade Descriptions Act, 1972, and punishable under section 18 of the same Act."

The charge against the manager reads more or less the same, except that here the charge alleges that the accused was manager of the company.

The case for the prosecution which the learned magistrate accepted was this. The company was in the business of selling the exercise books, the subject of the charges, and the appellant in the second appeal was its sales manager. There were three types of exercise books: one with the figure '40' printed on it; another with the figure '80' printed on it; and the third with the figure '100' printed on it, each of these figures being printed on the front cover. These figures denoted the number of pages contained in each of the books and they did not tally. The type printed with the figure '40' had only 24 pages, the type printed with the figure '80' had only 60 pages and the type printed with the figure '120' had only 100 pages. Thus, the accused had in the course of a trade or business applied false trade descriptions to the books, contrary to section 3(1)(a) of the Trade Descriptions Act, Act 87.

The question here is whether the learned magistrate was right in finding that the accused had in the course of a trade or business applied false trade descriptions to the exercise books.

The two accused were convicted in a retrial. They had previously been convicted before another Magistrate on March 4, 1974. They appealed and a retrial was ordered. At the first trial the principal witness was Encik Ismail Johan, Assistant Controller, Trade Description, Ministry of Trade and Industry, who on February 23, 1973, led a party to raid the premises of the company at the 4¼ mile, Klang Gate Road, Kuala Lumpur. At the retrial he was not called, as he had since died, and the principal witness for the prosecution was Encik Mohammed Kassim bin Haji Zainal of the Enforcement Division of the Ministry, and he was called as the second witness and accordingly numbered PW2, the first (PW1) being Encik Radha (a clerk in the Magistrate's Court) who produced the charge sheets and the notes of the evidence taken at the first trial. In his grounds, the learned magistrate who conducted the retrial referred to the deceased Encik Ismail Johan as PW1, and it was argued that the learned magistrate was in error. I agree he was wrong in so numbering Encik Ismail, but, with respect, I do not think that this made much difference. First, under section 33 of the Evidence Act the learned magistrate was entitled to rely on the evidence given by the deceased in the first trial "for the purpose of proving the truth of the facts which it states". Mr. Jagjit Singh drew my attention to the fact that after the deceased had given evidence

and while the second prosecution witness there was giving evidence, he (Mr. Jagjit Singh) applied to the court to further cross-examine Encik Ismail and at a later stage made a second application to do the same, and on each occasion permission was refused by the learned magistrate; and Mr. Jagjit Singh therefore argued that in view of proviso (b) of section 33 of the Evidence Act the retrial magistrate could not rely on the notes of the evidence given by Encik Ismail at the first trial. With respect I do not agree. First, after Encik Ismail had finished his examination-in-chief he was cross-examined by Mr. Jagjit Singh and his applications to further cross-examine the witness were refused on the ground that "PW1 had given long evidence", which I think was right. It is not true that the accused was not given the right and opportunity to cross-examine the deceased.

Secondly, even without the evidence of Encik Ismail, there was enough evidence by Encik Mohammed Kassim to justify the retrial magistrate concluding that there were found on the premises belonging to the company the exercise books, the subject of the charges.

For the same reason I reject Mr. Jagjit Singh's argument that the learned magistrate used Encik Ismail's recorded evidence as the entire basis of the prosecution case.

Mr. Jagjit Singh further argued that the learned magistrate was wrong in admitting in evidence only some of the exercise books (30 in number) and not the whole lot. With respect, I do not think that the prosecution is obliged to tender and the court to admit all the books as exhibits. It is enough if those not admitted are kept in readiness for inspection by anybody concerned.

Mr. Jagjit Singh next argued that it was wrong of the magistrate to presume that the figures '40', '80' and '120' on the three types of exercise books seized referred to pages of the respective books.

As to this, the law is as follows: any person who in the course of trade or business applies a false trade description to any goods is guilty of an offence, section 3(1)(a) of the Trade Descriptions Act, 1972. A trade description is an indication, direct or indirect, and by whatever means given, of the quantity or size of any goods, section 4(1)(a). Quantity includes volume and number, section 4(3). A false trade description is a trade description which is false to a material degree, section 5(1). A trade description which is not false is deemed to be a false trade description if it is misleading, i.e., likely to be taken for such an indication of quantity or size as would be false to a material degree, section 5(2). Anything which, though not a trade description, is likely to be taken for an indication of quantity or size, which indication being false to a material degree, is deemed to be a false trade description, section 5(3).

In my judgment, the learned magistrate was right in finding that the man in the street would conclude that the figures on the outside covers of these books were likely to be taken for an indication of their pages and that they were misleading. It would have been otherwise if the figures had not been low denomination ones close to the number of pages actually contained in the exercise books and had been, for instance, 1,000 or 2,000 or 3,000 respectively, figures which only a moron in a hurry would mistake as denoting the number of pages.

Mr. Jagjit Singh contended that the figures on the books indicated the numbers of the orders for these books, but the defence advanced no evidence to that effect. I would advise traders not to use figures on the front covers of exercise books offered for sale to indicate trade orders, especially as these books are usually sold to school children, many of whom can easily be misled into thinking that they refer to the number of pages in each book. Standards of honesty in some commercial circles are low and the court should move with alacrity to protect consumers from dishonest merchants.

Mr. Jagjit Singh complained that the charges were defective in that they gave no particulars. With respect I do not think that there is anything in this complaint. At the first trial the accused knew exactly the evidence led against them and what the prosecution intended to prove, and so the accused were in no way misled at the retrial when the case for the prosecution remained the same. So any defect in the charges has not in my view occasioned a failure of justice, section 422 of the Criminal Procedure Code. In any event, there were sufficient particulars in the charges to alert the accused.

Mr. Jagjit Singh further complained that the magistrate was wrong in holding that the company was doing business at the material time when there was no evidence to support such a finding. With respect I do not think that there is merit in this argument. The premises raided were business premises; while there Encik Ismail saw customers coming to collect orders and the books found totalled 20,000 copies, more than enough for use by the accused in their office; all this evidence is enough to raise a *prima facie* case against the accused, which case they did not rebut.

With regard to the company, Mr. Jagjit Singh argued that the magistrate was wrong in not considering the question of *mens rea* on the part of an officer of the company, that he should have found there was no *mens rea* by any officer of the company and that therefore the company could not be guilty. It is true that the prosecution should prove *mens rea*, but in my judgment the learned magistrate was right in holding on the evidence that *prima facie* the company and its manager had a guilty mind. On the evidence there was also a *prima facie* case showing that the manager, who was active in running the business, had applied a false trade description to the exercise books. As none of them gave evidence, the magistrate was right in finding them guilty.

The magistrate held that the manager consented to, connived with the company or there was neglect on his part, and he so held on "the evidence of PW1 [meaning Encik Ismail] when the [manager] told him that he was the sales manager and even assisted PW1 in checking the books. PW1 also noticed many people coming to the premises to buy books". Mr. Jagjit

Singh argued that the magistrate was wrong in so doing "when no such evidence was led by the prosecution [at the retrial]". I have already held that the notes of Encik Ismail's evidence at the first trial were admissible under section 33 of the Evidence Act to prove the truth of the facts which they state.

In my judgment, the learned magistrate was in the circumstances right in holding that the accused had in the course of a trade or business applied false trade descriptions to these exercise books, and I would accordingly dismiss these appeals.

As regards sentences (a fine of $4,000 or six months on each charge — totalling $8,000), with respect I do not think that they were manifestly excessive or followed wrong principles. As the learned magistrate said, a deterrent sentence should make the defendants realize that the exploitation of the public, especially school children, must end.

As regards disposal of the exhibits, the learned magistrate ordered that the books admitted as exhibits be returned to the Ministry of Trade for disposal; I confirm that order.

The learned magistrate made no order regarding the books not exhibited. Presumably they are still in the custody of the Ministry or the police within the meaning of subsection (ii) of section 407 of the Criminal Procedure Code, in which event I order that they be forfeited to the Ministry if the number of pages in each book does not correspond to the figure printed on the outside cover. In fairness to the accused, they are given one month from today to check in the presence of Ministry officials the number of pages.

Order accordingly.

Solicitors: *Jagjit Singh & Co.*

GOOPAN s/o GOVINDASAMY v. A. SUBRAMANIAM & ANOR.

[O.C.J. (Wan Hamzah J.) December 21, 1978]
[Kuala Lumpur — Civil Suit No. 746 of 1975]

Practice and Procedure — Limitation — Amendment of legislation to extend time for instituting action — Whether plaintiff could rely on amendment to extend time for his claim which had already been time-barred — Public Authorities Protection Act, 1948, s. 2(a) — Interpretation Act, 1967, ss. 3, 30(1)(b).

On September 19, 1972, the plaintiff sustained injuries as he fell off a tractor trailer driven by the first defendant for the purpose of being sent to work at a place in the course of the plaintiff's employment by the second defendant, the Government of Malaysia. At that time the Public Authorities Protection Act 1948 was in force and had not been amended. Section 2(a) of the said Act provides that the action should be brought within twelve months of the cause failing which it will be time-barred. On June 13, 1974 an amendment came into force amending the period of twelve months to thirty six months.

On May 15, 1975 the plaintiff commenced this action. He contended that the effect of the amendment to section 2(a) was to extend the time for instituting action in this case to thirty six months from September 19, 1972 (the date of the accident) and the last date for instituting action was on September 18, 1975, and since the writ was issued before September 18, 1975 it was issued within proper time.

Held, dismissing the claim: (1) the amendment operates to extend the time for instituting proceedings in respect of future causes of action i.e. causes of actions which arise after the date of the coming into force of the amendment, and to extend the time for instituting actions which had not been time-barred at that date. It does not, however, operate to extend the time for instituting actions which had been time-barred at that date;

(2) since the present action had already been time-barred before the amendment came into force, it was not affected by the amendment and it continued to be time-barred when the writ was issued on May 15, 1975.

Cases referred to:-

(1) *K.K.K. Ramanathan Chettiar* v. *N.M. Kandappa Goundan* A.I.R. 1951 Mad. 314.

(2) *N.M. Yousoff* v. *Teo Kai Tee & Anor.* [1953] M.L.J. 188.

CIVIL SUIT.

David Tay for the plaintiff.

Lim Keng Seng (Federal Counsel) for both the defendants.

Cur. Adv. Vult.

Wan Hamzah J.: When this action came up for trial on September 13, 1978 the learned Federal Counsel for the defendants raised a preliminary objection and argued that it was time-barred under section 2 of the Public Authorities Protection Act, 1948.

On September 19, 1972 the plaintiff was being transported on a tractor trailer driven by the first defendant for the purpose of being sent to work at a place in the course of the plaintiff's employment by the second defendant, the Government of Malaysia. Whilst so travelling the plaintiff fell off the tractor trailer and suffered injuries. At that time the Public Authorities Protection Act, 1948 was in force and had not been amended. At that time section 2(a) of the Act read as follows:—

"2. Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect —

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within twelve months next after the ceasing thereof."

Therefore if an action was to be brought against the defendants for alleged negligence in connection with that accident on September 19, 1972, the time for instituting such action would expire on September 19, 1973. On June 13, 1974 an amendment to section 2(a) of the Act came into force, whereby the words "twelve months" therein should now read "thirty six months". On May 15, 1975 the plaintiffs commenced this action and the Writ was issued, whereby the plaintiff alleges negligence on the part of the defendants in causing him to fall from the tractor trailer. It was contended on behalf of the plaintiff that the effect of the amendment to section 2(a) is to extend the time for instituting action in this case to thirty six months from September 19, 1972 (the date of the accident) and the last date for instituting action is September 18, 1975 it was issued within proper time.